2-25-2016

State v. Elizondo Respondent's Brief Dckt. 43333

IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,	)	
	)	**No. 43333**
Plaintiff-Respondent,	)	
	)	**Kootenai Co. Case No.**
v.	)	**CR-2015-1690**
	)	
JORGE A. MORA ELIZONDO,	)	
	)	
Defendant-Appellant.	)	
	)	

BRIEF OF RESPONDENT

APPEAL FROM THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF KOOTENAI

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District Judge

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STATEMENT OF THE CASE

Nature Of The Case

Jorge A. Mora Elizondo appeals from the judgment entered upon his guilty plea to felony injury to children. Elizondo claims the prosecutor breached the plea agreement in making her sentencing recommendation and that the district court abused its sentencing discretion.

Statement Of Facts And Course Of Proceedings

According to the Presentence Report ("PSI"), the facts leading to Elizondo's conviction for felony injury to children are as follows:

> On 01/12/2015 at approximately 1550 hours, Heather Young spoke to Officer Robertson, regarding sexual misconduct between her [redacted] [A.M.] ([redacted]) and Ms [sic] Young's fiancé, Jorge Mora Elizondo ([redacted]).
>
> On 01/13/15, Deputy Uhrig was assigned this case for investigation. [A.M.] stated about a month ago, around Christmas break, she was caught by Mr. Elizondo sneaking back into the house and he cornered her and "sniffed her vaginal area" and sent her to bed. Then around 0100 hours, he produced a little black vibrator and told her to drop her pants. [A.M.] stated she told Mr. Elizondo no but he kept insisting. She stated she would not do it unless she was in the bathroom. She went into the bathroom and dropped her pants. Mr. Elizondo then opened the door to the bathroom. He had her put the device in her vagina and he watched. [A.M.] explained once the device vibrated, she gave it back to Mr. Elizondo, who indicated he was going to take it to work with him to "test" if she had sex, telling her that he was going to plug it in to his computer at work.
>
> [A.M.] told Detective Uhrig about the night of 01/13/15, when Mr. Elizondo wanted to talk to her in his room. He locked the door. Mr. Elizondo told [A.M.] to sit on the floor and she complied. He then instructed her to lay down and she complied. Mr. Elizondo got on top of her and he held her hands down above her head. [A.M.] told Detective Uhrig she did not want to look at him, as he had a psychotic look on his face but he would force her head to look at

> him. He began to choke her with his hand and she was starting to have trouble breathing. He eventually got off her and told her to follow him into her room. Mr. Elizondo instructed her to pull out a box from underneath her bed. Inside were marijuana and a marijuana pipe. [A.M.] stated the items did not belong to her but Mr. Elizondo said they were hers. Mr. Elizondo then got back on top of her and told her to look at him. He put his hand on her stomach, lifted up her shirt, and began to circle her belly button with his finger. [A.M.] told Detective Uhrig, he moved his hand up under her shirt between her breasts. She stated she was not wearing a bra at the time. She pushed his hand away and told him it was not okay. Mr. Elizondo got off her and left the room. While Mr. Elizondo was on top of [A.M.], she was able to feel that he had an erection.

(PSI, pp.2-3.)

The state charged Elizondo with two counts of sexual battery of a minor child sixteen or seventeen years of age and one count of misdemeanor injury to a child. (R., pp.36-38.) Pursuant to a plea agreement, Elizondo pled guilty to an amended charge of felony injury to a child based on his willfully causing or permitting A.M. "to suffer unjustifiable mental suffering . . . by having sexual contact with said child[.]" (R., pp.42-43.) The state agreed to recommend a sentence of local jail and probation, which recommendation was not binding on the court. (R., p.44; Plea Tr., p.15, L.9 – p.16, L.5.) The district court sentenced Elizondo to an underlying sentence of five years with two years fixed and retained jurisdiction. (R., pp.51-53.) Elizondo filed a timely notice of appeal. (R., pp.58-60.)

ISSUES

Elizondo states the issues on appeal as:

1. Did the State deprive Mr. Elizondo of his right to due process when the State breached the plea agreement by impliedly disavowing its promised sentencing recommendation?

2. Did the district court abuse its discretion when it imposed a unified sentence of five years, with two years fixed, upon Mr. Elizondo, following his *Alford* plea to felony injury to a child?

(Appellant's Brief, p. 4.)

The state rephrases the issues on appeal as:

1. Has Elizondo failed to show the prosecutor's comments at sentencing constituted a breach of the plea agreement?

2. Has Elizondo failed to show the district court abused its discretion by ordering an underlying sentence of five years with two years fixed and placing him in the retained jurisdiction program?

ARGUMENT

I.

Elizondo Has Failed To Show The Prosecutor's Comments At Sentencing Constituted A Breach Of The Plea Agreement

A. Introduction

Elizondo asserts he was deprived "of his right to due process when the state breached the plea agreement by impliedly disavowing its promised sentencing recommendation." (Appellant's Brief, p.5 (capitalization and emphasis modified).) Elizondo's claim fails. Elizondo has failed to show the prosecutor's statements at sentencing were improper.

B. Standard Of Review

Plea agreements are contractual in nature. State v. Lutes, 141 Idaho 911, 914, 120 P.3d 299, 302 (Ct. App. 2005). Therefore, as with other types of contracts, the interpretation and legal effect of a clear and unambiguous plea agreement are matters of law reviewed *de novo*. Id. Likewise, "whether a plea agreement has been breached is a question of law to be reviewed by [the appellate court] *de novo*, in accordance with contract law standards." State v. Gomez, 153 Idaho 253, 255, 281 P.3d 90, 92 (2012) (quoting State v. Peterson, 148 Idaho 593, 595, 226 P.3d 535, 537 (2010)); accord State v. Jafek, 141 Idaho 71, 73, 106 P.3d 397, 399 (2005); State v. Schultz, 150 Idaho 97, 99, 244 P.3d 241, 243 (Ct. App. 2010).

The standard of appellate review applicable to constitutional issues, including claimed due process violations, is one of deference to factual findings,

unless they are clearly erroneous, but free review of whether constitutional requirements have been satisfied in light of the facts found. State v. Decker, 152 Idaho 142, 147, 267 P.3d 729, 734 (Ct. App. 2011); State v. Jacobson, 150 Idaho 131, 134, 244 P.3d 630, 633 (Ct. App. 2010). "It is the defendant's burden to demonstrate facts that constitute a due process violation." Decker, 152 Idaho at 147, 267 P.3d at 734 (citing Jacobson, 150 Idaho at 134, 244 P.3d at 633; State v. Cantrell, 139 Idaho 409, 412, 80 P.3d 345, 348 (Ct. App. 2003)).

C. Elizondo Has Failed To Establish The Prosecutor's Comments At Sentencing Were Error

As part of Elizondo's plea agreement, the state agreed to recommend a sentence of local jail and probation, which recommendation was not binding on the court. (R., p.44; Plea Tr., p.15, L.9 – p.16, L.5.) The prosecutor's actual recommendation was well within those limitations. The relevant portion of the prosecutor's comments at sentencing reads:

> In this particular case, there was a pretrial settlement offer with a recommendation for local jail time and probation. As such, the State's recommendations in this case is [sic] for four years fixed followed by three years indeterminate for a seven-year unified sentence. We're asking to place the defendant on four years of supervised probation, and we are asking for the Court to impose some actual jail time. Obviously, the PSI does recommend a retained jurisdiction, but we're bound by our recommendation for time and probation.
>
> This case involves some very serious allegations, a very disturbing set of facts. However, I think something that the State had taken into consideration was this was a first criminal conviction of any kind.
>
> So, with that being said, I think given the nature of the offense that the defendant has pled guilty to and has taken accountability for, the felony injury to a child, I think that there

> should be some significant jail time imposed without the potential for work release or even treatment release, if that was appropriate. I think somewhere between six months is appropriate given the severity of this offense and the fact that the PSI does recommend a rider. I think taking that into account, I think a longer period of incarceration would certainly be appropriate.
>
> This has obviously affected [A.M.] and her family and caused significant damage to them, so I think that some punishment is certainly appropriate.
>
> I also think that in a case like this, we have to consider deterrence to the public, as well as to the defendant in this case, and so I think a seven-year sentence, a heftier sentence, would certainly be appropriate.
>
> Normally, given lack of criminal history, we would probably recommend something lower, but I think given the nature of this particular offense, that would be a more appropriate sentence for deterrence, as well as placing the defendant on a longer period of supervised probation. I think that would be beneficial in order to ensure that we don't have other law violations and that the public is protected.

(Sent. Tr., p.12, L.17 – p.14, L.3.)

Elizondo argues that the above comments by the prosecutor at sentencing were not "reasonably consistent" with the "promised recommendation of a lenient sentence of probation and local jail time[,]" "effectively disavowed the recommendation and advocated a harsher sentence[,]" and "breached the plea agreement by failing to fulfill its side of the bargain." (Appellant's Brief, p.10.) Elizondo's arguments fail.

A prosecutor is entitled to make a "vigorous argument" in support of her sentencing request. See, e.g., State v. Stocks, 153 Idaho 171, 175, 280 P.3d 198, 202 (Ct. App. 2012); State v. Halbesleben, 147 Idaho 161, 168, 206 P.3d 867, 874 (Ct. App. 2009). Absent some basis for finding the prosecutor's

argument was inconsistent with the agreed-upon recommendation, enthusiastically recommending the sentence authorized by the plea agreement does not constitute a breach. Halbesleben, 147 Idaho at 165, 206 P.3d at 871.

Like the defendant in Halbesleben, supra, Elizondo relies on State v. Daubs, 140 Idaho 299, 92 P.3d 549 (Ct. App. 2004), State v. Jones, 139 Idaho 299, 303, 77 P.3d 988, 992 (Ct. App. 2003), State v. Wills, 140 Idaho 773, 102 P.3d 380 (Ct. App. 2004), and State v. Lankford, 127 Idaho 608, 903 P.2d 1305 (1995), to support his claim that the prosecutor in this case breached the plea agreement. (Appellant's Brief, pp.5-10.) As explained by the Idaho Court of Appeals in Halbesleben, however, the cases are distinguishable because:

> In each of the cases cited above, the prosecutor acknowledged the recommendation required by the plea agreement but argued various other reasons why the district court should not accept the recommendation and, instead, impose a more severe sentence. Or, in the case of Lankford, the prosecutor presented additional aggravating evidence which, at a sentencing for first degree murder, only served to favor imposition of the death penalty or fixed life. This was entirely inconsistent with the state's agreement to recommend an indeterminate term of life imprisonment. In the present case, the prosecutor made no allusion to a more severe recommendation contained in the PSI nor gave any personal opinion that Halbesleben's crimes merited a greater punishment than what was recommended. The prosecutor's vigorous argument did not undermine the sentencing recommendation but, rather, buttressed it against any argument from defense counsel that Halbesleben merited even lesser sentences based on mitigating factors. Therefore, the prosecutor did not impliedly disavow the sentencing recommendation through her vigorous argument of the facts of Halbesleben's crimes and, thus, did not breach the plea agreement.

Halbesleben, 147 Idaho at 166-68, 206 P.3d at 872-874.

Elizondo's reliance on Daubs, Wills, Jones, and Lankford is misplaced. None of those cases even hints that it is possible to undermine a

recommendation, and thus breach a plea agreement, merely by talking about the facts of the case or by drawing logical inferences therefrom. The prosecutor in this case did not present any argument to the district court that was inconsistent with the recommendation for local jail and probation. The prosecutor's argument was directed at convincing the court that Elizondo should have to serve at least six months in local jail and be given an underlying prison term that would deter him from further criminality while on probation. The prosecutor's comments were well within the terms and spirit of the plea agreement. Elizondo's more specific contentions do not show otherwise.

First, the prosecutor's reference to the PSI's recommendation of a retained jurisdiction was not an attempt to have the court order the same. (See Appellant's Brief, pp.8-9.) The prosecutor stated, "I think somewhere between six months is appropriate given the severity of this offense and the fact that the PSI does recommend a rider. I think taking that into account, I think a longer period of incarceration would certainly be appropriate." (Sent. Tr., p.13, Ls.10-14.) The prosecutor's comment about a rider – normally six months in duration – was simply a way to argue that Elizondo should receive at least that amount of local jail time.

Second, the prosecutor's comments that Elizondo's crime involved a "serious allegation" and "a very disturbing set of facts" was an understated way of describing the overall incident set forth in the PSI, not an attempt to undercut the plea agreement. (See Appellant's Brief, p.9.) In fact, the prosecutor made no specific mention of Elizondo ordering A.M. to insert a small vibrator into her

vagina and telling her that he would take it to work and test it to see if she had had sex. (See PSI, p.3.) Also, Elizondo's reported conduct, including his getting on top of A.M. and choking her while he held her hands above her head, was obviously a serious and disturbing allegation. The prosecutor's short-hand descriptions of Elizondo's conduct were factually supported by the PSI and not inflammatory.

Third, Elizondo takes issue with the prosecutor saying that his criminal conduct "obviously affected [A.M.] and her family and caused significant damage to them, so I think that some punishment is certainly appropriate." (Sent. Tr., p.13, Ls.15-17; Appellant's Brief, p.9.) Elizondo argues that "the prosecutor drew the district court's attention to the nature of the crime and the victim impact statements, even though the facts were highly disputed . . . ." (Appellant's Brief, p.9.) Contrary to Elizondo's apparent contention, it was not inappropriate for the prosecutor to summarize the impact his criminal conduct reportedly had on A.M. and her family. See Idaho Const. art. I, § 22(6); I.C. § 19-5306(1); see also State v. Guerrero, 130 Idaho 311, 312, 940 P.2d 419, 420 (Ct. App. 1997) (holding right of a crime victim to address the court at the offender's sentencing hearing is guaranteed by the Idaho Constitution and Idaho Code). Moreover, the prosecutor could hardly have done more to soften the description of the impacts Elizondo's crime had and the appropriate punishment – "obviously affected," "significant damage," and "some punishment" did not signal that the judge should go beyond the prosecutor's sentencing recommendation.

Fourth, Elizondo asserts that the plea agreement called for leniency by the state. (Appellant's Brief, pp.8-10.) However, the "leniency" was built into the plea agreement itself by limiting the state's recommendation to local jail and probation – in contrast to the ten-year statutory maximum sentence for felony injury to a child. See I.C. § 18-1501(1). The prosecutor's call for a "heftier" seven-year sentence was in regard to the underlying sentence "that would be a more appropriate sentence for deterrence, as well as placing the defendant on a longer period of supervised probation." (Sent. Tr., p.13, L.18 – p.14, L.3.) Plainly, the prosecutor was adhering to the agreement to recommend local jail and probation, with the seven-year underlying sentence to serve as incentive (or "deterrence") for Elizondo to be successful on probation.

Nothing in the prosecutor's statements in this case was inconsistent with the agreement to recommend local jail and probation, nor did the prosecutor implicitly disavow the recommendation she made. Indeed, although the prosecutor had the ability to recommend up to one year of local jail time, she did not. Her recommendation was for at least six months jail (using the six month retained jurisdiction period as a guide) and probation – clearly within the terms of the plea agreement. Elizondo's claim to the contrary fails.

II.

Elizondo Has Failed To Show The District Court Abused Its Discretion By Ordering An Underlying Sentence Of Five Years With Two Years Fixed And Placing Him In The Retained Jurisdiction Program

A. Introduction

Elizondo contends the district court abused its sentencing discretion "when it imposed a unified sentence of five years, with two years fixed, upon [him], following his *Alford*[1] plea to felony injury to a child." (Appellant's Brief, p.10 (capitalization modified).) Elizondo contends that "the district court should have sentenced him to a lesser term of imprisonment or probation in light of the mitigating factors."[2] (Id., p.12.) Elizondo's argument fails.

B. Standard Of Review

"Where the sentence imposed by a trial court is within statutory limits, the appellant bears the burden of demonstrating that it is a clear abuse of discretion." State v. Miller, 151 Idaho 828, 834, 264 P.3d 935, 941 (2011) (quotations and citations omitted). "In deference to the trial judge, this Court will not substitute its view of a reasonable sentence where reasonable minds might differ." Id.

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[1] North Carolina v. Alford, 400 U.S. 25 (1970).

[2] According to the Idaho Supreme Court Data Repository, on October 30, 2015, the district court placed Elizondo on probation for two years. See Case Number Result Page for Kootenai Co. Case No. CR-2015-0001690 at https://www.idcourts.us/repository/caseNumberResults.do. To the extent Elizondo contends he should have been initially sentenced to probation, that argument is now moot.

C. The District Court Did Not Abuse Its Sentencing Discretion

"When reviewing the reasonableness of a sentence this Court will make an independent examination of the record, having regard to the nature of the offense, the character of the offender and the protection of the public interest." Miller, 151 Idaho at 834, 264 P.3d at 941 (quotations and citation omitted). A review of the record demonstrates that Elizondo's sentence is not excessive. Elizondo has failed to establish otherwise.

The four objectives of sentencing are well-established. They are "(1) protection of society; (2) deterrence of the individual and the public generally; (3) the possibility of rehabilitation; and (4) punishment or retribution." State v. Knighton, 143 Idaho 318, 319-320, 144 P.3d 23, 24-25 (2006) (quotations and citations omitted). "A sentence need not serve all sentencing goals; one may be sufficient." State v. Sheahan, 139 Idaho 267, 285, 77 P.3d 956, 974 (2003) (citing State v. Waddell, 119 Idaho 238, 241, 804 P.2d 1369, 1372 (Ct. App. 1991)). State v. Ozuna, 155 Idaho 697, 705, 316 P.3d 109, 117 (Ct. App. 2013) ("The primary consideration is, and presumptively always will be, the good order and protection of society. All other factors are, and must be, subservient to that end.").

The appellate court presumes that the sentencing court is able to ascertain the relevancy and reliability of the broad range of information and material which is presented to it during the sentencing process. State v. Pierce, 100 Idaho 57, 58, 593 P.2d 392, 393 (1979); State v. Campbell, 123 Idaho 922, 854 P.2d 265 (Ct. App. 1993); State v. Bundy, 122 Idaho 111, 831 P.2d 953 (Ct.

App. 1992); State v. Holmes, 104 Idaho 312, 658 P.2d 983 (Ct. App. 1983). The broad spectrum of information a court may consider at sentencing includes a defendant's past criminal history and, with due caution, "the existence of [a] defendant's alleged criminal activity for which no charges have been filed, or where charges have been dismissed." State v. Wickel, 126 Idaho 578, 581, 887 P.2d 1085, 1088 (Ct. App. 1994).

In imposing sentence the district court said:

> I have reviewed the information that has been presented. I have reviewed the presentence investigation report. . . .
>
> As I see it, I see two options, one of an underlying sentence and probation and the other being that of – which would include a jail sentence, a local jail sentence, and the other being a retained jurisdiction.
>
> In reviewing the presentence investigation report, I note that Mr. Mora Elizondo had an aggregate LSI score of 17, which places him in the moderate risk category.[3] "No treatment is recommended. No additional mental health assessment is necessary. His emotional behavioral conditions appear to be stable."
>
> I am concerned about the potential risk and the risk factors as it relates to this particular offense. Although he entered an Alford plea, the allegation of this specific count stated that he did willfully inflict upon a child under the age of 18, to wit: under the age of 16 years, unjustifiable physical pain or mental suffering . . . .
>
> In this case, I am going to impose an underlying sentence in light of his – the fact that he has no prior criminal history of two years fixed, three years indeterminate, not to exceed five years. I do think for the protection of society, it would be appropriate to have further review of him while in custody, and to do that, I am going to retain jurisdiction and recommend the Retained Jurisdiction Program, which is often referred to as the standard Retained Jurisdiction Program.

[3] "LSI score" is the assessed potential for recidivism. (PSI, pp.12-13.)

(Sent. Tr., p.19, L.11 – p.20, L.20.) After considering the relevant sentencing objectives, Elizondo's lack of criminal history, and the PSI, the district court rightly determined that an underlying five-year sentence with two years fixed, and retained jurisdiction, for felony injury to a child was appropriate.

Elizondo first "asserts that the district court abused its discretion at sentencing by imposing a sentence based on his incorrect understanding of the charged conduct. The district court stated at sentencing:

> Although he entered into an *Alford* plea, the allegation of this specific count stated that he did willfully inflict upon a child under the age of 18, to wit: under the age of 16 years, unjustifiable physical pain or mental suffering, to wit: *choking her by placing his hands around her neck while he was on top of her*, all of which is contrary to the form, force, and effect of the statute.

(Appellant's Brief, p.11 (citing Sent. Tr., p.20, Ls.5-11) (emphasis in Appellant's Brief).) Immediately after making the above comments, the district court sentenced Elizondo to five years, with two years fixed, and retained jurisdiction. (Sent. Tr., p.20, Ls.12-20.)

The district court clearly misspoke when it described the conduct to which Elizondo pled guilty. Count III of the original Information charged Elizondo with felony injury to child by "choking [A.M.] by placing his hands around her neck while he was on top of her[.]" (R., pp.36-38.) Elizondo did not plead guilty to that specific charge of felony injury to child. Instead, pursuant to the plea agreement, Elizondo entered an Alford plea of guilty to the Amended Information's charge of felony injury to child predicated on his "having sexual contact with [A.M.]" (R., pp.42-43.) To the extent the district court believed Elizondo pled guilty to a

different act (i.e., "choking") underlying the felony injury to child charge than the act actually alleged (i.e., "sexual contact"), it erred.

However, any such error was harmless because the conduct mis-cited by the district court as the "specific count" relevant to Elizondo's sentencing for felony injury to child would have been properly considered as a dismissed count. As noted, a trial judge may consider a myriad of factors in imposing a sentence, including "criminal activity for which no charges have been filed, or where charges have been dismissed." Wickel, 126 Idaho at 580-581, 887 P.2d at 1087-1088; State v. Barnes, 121 Idaho 409, 825 P.2d 506 (Ct. App. 1992); see also State v. Stewart, 122 Idaho 284, 286, 833 P.2d 917, 919 (Ct. App. 1992). In short, the district court's consideration of the dismissed "choking" count was proper.

There is no reason to believe the district court would have given Elizondo a lighter sentence if it had correctly stated that the felony injury to child charge was based on "sexual conduct" instead of "choking." The PSI explained that during the January 13, 2015 incident, Elizondo had sexual contact with A.M. shortly before, during, and after he choked her. (See Statement of Facts, pp.1-2, supra; PSI, p.3) Inasmuch as the felony injury to child incident inextricably involved both choking and sexual contact, it made little, if any, difference which conduct was the named basis for the charge – the court was entitled to consider all of it for sentencing purposes.

Elizondo also asserts his sentence is excessive in light of the following alleged mitigating factors: (1) he had no prior criminal history, (2) he allegedly

accepted responsibility for his crime, and (3) he would likely succeed if placed on probation, based on (a) his skills for jobs, (b) he has no substance abuse issues, and (c) his family relationship is good. (Appellant's Brief, pp.10-13.) Despite Elizondo's arguments, the record supports the sentence imposed by the district court.

To demonstrate a clear abuse of discretion, the appellant must show that the sentence is excessive under any reasonable view of the facts. State v. Baker, 136 Idaho 576, 577, 38 P.3d 614, 615 (2001). A sentence is reasonable, however, if it appears necessary to achieve the primary objective of protecting society or any of the related sentencing goals of deterrence, rehabilitation or retribution. Id. The protection of society is, and must always be, the ultimate goal of any sentence. State v. Moore, 78 Idaho 359, 363, 304 P.2d 1101, 1103 (1956). Accordingly, appellate courts must take into account "the nature of the offense, the character of the offender, and the protection of the public interest." State v. Hopper, 119 Idaho 606, 608, 809 P.2d 467, 469 (1991); see also I.C. § 19-2521.

Although the district court correctly noted that Elizondo did not have any prior criminal convictions, it based its sentencing decision on the PSI's determination that Elizondo was a moderate risk to re-offend and the need to take reasonable steps to protect society from that risk. (Sent. Tr., p.19, L.22 – p.20, L.15.) Although Elizondo may have a supportive family, job skills, and no substance abuse issues, and, even assuming, *arguendo*, he accepted

responsibility for his crime,[4] the court properly determined that, in order to protect society, "it would be appropriate to have further review of him while in custody[.]" (Id.) Similarly, the presentence investigator recommended that the court retain jurisdiction. (PSI, p.14.)

The district court in this case focused on Elizondo's risk to re-offend and the overriding need to protect society. Given any reasonable view of the facts, Elizondo has failed to establish an abuse of sentencing discretion.

CONCLUSION

The state respectfully requests this Court to affirm the district court's Judgment of Conviction and sentence.

DATED this 25th day of February, 2016.

/s/ John C. McKinney
JOHN C. McKINNEY
Deputy Attorney General

[4] The presentence investigator obviously did not conclude that Elizondo accepted responsibility for his crime, stating: "Mr. Elizondo was very vague in his version of the crime and his significant family information. I did not believe Mr. Elizondo was truthful regarding his instant offense. Mr. Elizondo indicated he has no idea why he is being convicted of a sex crime." (PSI, p.13.)

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have this 25th day of February, 2016, served a true and correct digital copy of the foregoing BRIEF OF RESPONDENT by emailing the brief to:

JENNY C. SWINFORD
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/s/ John C. McKinney
JOHN C. McKINNEY
Deputy Attorney General

JCM/dd